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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

Q175-US1

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Application Number
10/718,981Filed
November 20, 2003First Named Inventor
Taison Tan et al.Art Unit
1745Examiner
Robert Hodge

Applicant requests review of the final rejection in the above-identified patent application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 42,491☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

Signature

Travis Dodd

Typed or printed name

818-833-2003

Telephone number

12/03/2007

Date

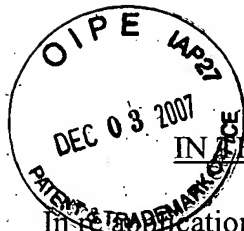
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This collection of information is required by 37 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT
Docket No. Q175-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Tan, Taison et al.

Serial No: 10/718,981

Filed: November 20, 2003

For: PRIMARY BATTERY HAVING SLOPED
VOLTAGE DECAY

Art Unit: 1745

Examiner: Hodge, Robert

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pre-Appeal Brief Request for Review

This communication is in response to the Office Action mailed on August 3, 2007 (the Office Action). Pending claims 1-47 are rejected under 35 USC §103 as being unpatentable over the combination of U.S. Pre-Grant Publication Number 2003/0211383 (Munshi) in view of U.S. Pre-Grant Publication Number 2002/0004169 (Yamada).

Pending claims 1-47 are also rejected for nonstatutory obviousness-type double patenting.

The Applicant submits that a clear legal error has been committed in both of the above rejections.

REMARKS

A. The Pending Claims

Pending claims 1-47 include several Independent Claims that are each directed to a battery. The issue at hand is evident from the claim 1 limitation of "an anode having a first medium including a first active material and a second medium having a concentration gradient of a second active material."

B. Rejection of Claims Under 35 USC §103

Claims 1-47 stand rejected under 35 USC §103 as being unpatentable over the combination of U.S. Pre-Grant Publication Number 2003/0211383 (Munshi) in view of U.S. Pre-Grant Publication Number 2002/0004169 (Yamada). The rejection of all of these claims relies on Yamada teaching two layers of active material where one of the layers is a layer of lithium foil. For instance, the pending Office Action states the following:

Munshi does not teach an anode having two layers of active material.

Yamada teaches ... the anode can comprise ... a layer of lithium or lithium foil provided over the layer of LiSiO (abstract and paragraphs [0046-0048]). (See paragraphs 4 and 5 on page 5 of the pending Office Action)

However, Yamada provides no such teaching. Further, the citations in the above quotation actually show that Yamada fails to provide this teaching. For instance, in the Abstract, there is simply no teaching regarding “a layer of lithium or lithium foil” in an anode or even LiSiO in an anode. Further, the chemistry disclosed in the abstract is directed to the positive electrode rather than the anode required by the claims. As a result, the abstract does not provide the cited teaching. The pending Office Action also cites paragraph 48 for this teaching. Paragraph 48 provides that “a foil of metal lithium ... may also be used as a negative electrode active material.” Teaching that lithium metal can be a negative active material does not even suggest that that the foil of metal lithium is “over (a) layer of LiSiO” as argued in the pending Office Action. Further, the Applicant has carefully reviewed Yamada and cannot find any paragraph that even suggests metal lithium “over (a) layer of LiSiO. When the lack of this suggestion was pointed out in the Amendment mailed on June 13, 2007, the pending Office Action again pointed the Applicant to paragraph 48. Since the cited teaching or suggestion cannot be found in paragraph 48 or elsewhere in Yamada, the pending claims are patentable over the cited art.

C. Double Patenting Rejection

Claims 1-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 7, 8, 13-17, 20-22, 24, and 27 of copending Application No. 10/719,279 ('279) in view of Yamada.

This rejection relies on Yamada providing the same teaching used to reject the claims under 35 USC §103. For instance, the pending Office Action provides the following:

The only difference between the present invention and copending Application No. 10/719,276 is the use of two layers of active material in the present invention.

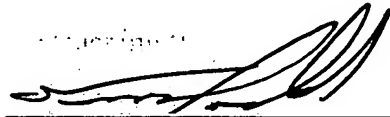
Yamada teaches a two-layered anode as discussed above, which would be obvious to include in copending Application No. 10/719,276. (Emphasis added.)

The use of the phrase “as discussed above” in this quotation shows that the pending Office Action is relying on Yamada providing the same teaching that the pending Office Action used to support the rejection under 35 USC §103. Since this rejection relies on Yamada providing that teaching and the above argument shows that Yamada does not provide that teaching, Yamada also does not support the double patenting rejection.

Conclusion

The Applicant respectfully submits that legal error has been made by rejecting the pending claims for statutory double-patenting. For these reasons, allowance of claims 1-47 is respectfully requested.

Respectfully submitted



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